



New Source Review (NSR) Reform: Background

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Following is information about New Source Review (NSR) reform for Prevention of Significant Deterioration (PSD) and Non-Attainment NSR Permitting Programs.

Introduction

U.S. EPA completed federal new source review (NSR) reform amendments containing the Prevention of Significant Deterioration (PSD) and non-attainment NSR permitting requirements in two phases. Indiana has incorporated these amendments into the current PSD and non-attainment NSR permitting programs, which are approved in the State Implementation Plan (SIP). Please view Indiana's current rules at [Title 326, Article 2 in the Indiana Administrative Code \(326 IAC 2\)](#).

NSR Reform: Phase 1

The first phase of NSR reform amendments were published in the [December 31, 2002, Federal Register \(67 FR 80186 \[PDF\]\)](#). These amendments were incorporated into Indiana rules, effective on September 9, 2004. The final state rulemaking was published in the [September 1, 2004, Indiana Register \[PDF\]](#).

On June 2, 2005, the U.S. Court of Appeals for the District of Columbia, in *New York v. EPA No 02-1387*, vacated the Clean Unit Designation, vacated the pollution control projects exclusion, and remanded the "reasonable possibility" provision of the recordkeeping requirement. Indiana amended the state rules appropriately.

The significant rule amendments can be put in four categories:

- New Actual-to-Projected-Actual (ATPA) Applicability Test for determining whether there will be an emission increase that triggers the need for a modification.
- New optional Clean Unit (CU) Designation for emission units that are considered "clean," i.e., a unit that has installed emissions controls that are equivalent or comparable to the best available control technology or the lowest achievable emissions rate. Vacated.
- The rule also provides procedures for exempting Pollution Control Projects (PCP) that might otherwise trigger major NSR requirements. Vacated.
- New optional program for sources covered by a Plantwide Applicability Limit (PAL).

State Implementation Plan (SIP) Submittal

IDEM worked closely with U.S. EPA staff throughout the entire rulemaking process. On September 2, 2004, Indiana formally submitted a request to U.S. EPA to amend the SIP to include the NSR reform rulemaking. IDEM submitted a [clarification to the SIP submittal on December 6, 2004 \[PDF\]](#), committing to follow the federal definition of "replacement" and address it in a future state rulemaking.

NSR Reform: Phase 2

The second phase of federal NSR reform was proposed in the [Federal Register on December 31, 2002 \(67 FR 89290 \[PDF\]\)](#) and addressed Routine Maintenance, Repair and Replacement. When U.S. EPA published the final amendments in the [Federal Register on October 27, 2003 \(68 FR 61248 \[PDF\]\)](#), the scope was narrowed to Equipment Replacement Provisions. U.S. EPA has indicated there may be a future rule addressing the maintenance and repair portions.

As explained in the [Federal Register on July 1, 2004 \(89 FR 40274 \[PDF\]\)](#), the U.S. Court of Appeals for the D.C. Circuit issued a December 24, 2003, stay order regarding U.S. EPA's Equipment Replacement Rule (ERP). Due to the stay order, "routine maintenance" will continue to be reviewed under the current guidance from U.S. EPA. [U.S. EPA's September 9, 1998, memo concerning the Wisconsin Electric Power Company \(WEPCO\) Port Washington Life Extension Project \[PDF\]](#) established four factors that should be evaluated in determining whether a project should be considered "routine maintenance."

The four factors established by U.S. EPA are:

1. Nature and extent of the project
2. Historical practices of the industry
3. Repetitive maintenance
4. Cost of the project

U.S. EPA further elaborated on the four factors to determine "routine maintenance" in a [May 23, 2000, letter from U.S. EPA Region 5 Administrator Francis Lyons to Henry Nickel, Counsel for the Detroit Edison Company \(see pages 8-11\) \[PDF\]](#).

The Wisconsin Electric Power Company (WEPCO) v. Reilly case is one of the pivotal decisions regarding routine maintenance in a court of law. The Legal Citations for WEPCO and Recent RMRR Cases include:

- Wisconsin Electric Power Company (WEPCO) v. Reilly, 893 F.2d 901 (7th Cir. 1990)
- United States v. Duke Energy Corp., 278 F.Supp.2d 619 (M.D.N.C. 2003)
- United States v. Ohio Edison Co., 276 F.Supp.2d 829 (S.D. Ohio 2003)
- United States v. S. Ind. Gas & Elec. Co., 245 F.Supp.2d 994 (S.D. Ind. 2003)
- Summary judgment granted for U.S. at 2003 U.S. Dist. LEXIS 2562 (S.D. Ind. 2003)
- United States v. Am. Elec. Power Serv. Corp., 218 F.Supp.2d 931 (S.D. Ohio 2003)

Additional Information

- [IDEM New Source Review page](#)
- [U.S. EPA New Source Review \(NSR\) Permitting page](#)